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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/537,595

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Winfried Antonius Henricus Berkvens

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EXAMINER

GOEL, DINESH K

ART UNIT

PAPER NUMBER

4134

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/537,595	Applicant(s) BERKVENS, WINFRIED ANTONIUS HENRICUS	
	Examiner DINESH GOEL	Art Unit 4134	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 6/6/2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 June 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>3/27/2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. The 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

The USPTO "Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility" (Official Gazette notice of 22 November 2005), Annex IV, reads as follows:

Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." In this context, "functional descriptive material" consists of data structures and computer programs which impart functionality when employed as a computer component. (The definition of "data structure" is "a physical or logical relationship among data elements, designed to support specific data manipulation functions." The New IEEE Standard Dictionary of Electrical and Electronics Terms 308 (5th ed. 1993).) "Nonfunctional descriptive material" includes but is not limited to music, literary works and a compilation or mere arrangement of data.

When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized. Compare *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994) (claim to data structure stored on a computer readable medium that increases computer efficiency held statutory) and *Warmerdam*, 33 F.3d at 1360-61, 31 USPQ2d at 1759 (claim to computer having a specific data structure stored in memory held statutory product-by-process claim) with *Warmerdam*, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure per se held nonstatutory).

In contrast, a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory. See *Lowry*, 32 F.3d at 1583-84, 32 USPQ2d at 1035.

2. **Claim 11** is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter as follows. Claim **11** defines a computer program embodying functional descriptive material. However, the claim does not define a computer-readable medium or memory and is thus non-statutory for that reason (i.e., "When functional descriptive material is recorded on some computer- readable medium

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it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized” – Guidelines Annex IV). That is, the scope of the presently claimed **computer** program can range from paper on which the program is written, to a program simply contemplated and memorized by a person.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. **Claim 1-6, 9, and 10** are rejected under 35 U.S.C. 102(b) as being anticipated by Gallant et al (WO 01/84794).

Referring to claims 1 and 9, Gallant et al discloses a communication system comprising networks and gateway means interconnecting the networks (Page 2 Line 18-26), one of the networks comprises a communication device (“106” in Figure 1) having means for sending a communication to at least one of the gateway means (“110” in Figure 1), and the gateway means having means for sending a message to the communication device, characterized in that the communication contains a communication request (“9” in Figure 1), that the message contains an answer (“10” in Figure 1) in response to the communication request, and that the communication device further has means for selecting

gateway means, based on the answer received from the at least one gateway means (Page 18 Lines 9-23, Page 19 Lines 1-9, Figure 4).

Referring to claim 2, the communication system according to claim 1, characterized in that the means for sending are arranged for broadcasting the communication request to each of the gateway means is further anticipated by Gallant et al (Page 17 Lines 1-2, Page 18 Lines 1-8).

Referring to claim 3, the communication system according to claim 1, characterized in that the communication device has means for sending a communication acknowledge message to the selected gateway means, and possibly to non selected gateway means is taught by Gallant et al (Page 17 Line 1-9).

Referring to claim 4, the communication device according to claim 1, characterized in that the communication device has means for receiving an answer to the communication request from the gateway means is further taught by Gallant et al (Page 18 Lines 13-15).

Referring to claim 5, the communication system according to claim 1, characterized in that the gateway means have means for sending on the

communication request to one or more other gateway means is further taught by Gallant et al (page 18 Line 12-13).

Referring to claim 6, the communication system according to claim 5, characterized in that the gateway means have means for receiving an answer to the communication request from the other gateways.

Referring to claim 10, Gallant et al further teach a method, effecting communication through at least one gateway, characterized in that a communication request is sent to one or more gateways, which send an answer back in response to the communication request, where after based on the received answer(s) the at least one gateway is selected (Page 17 Line 15-16, Page 18 Line 1-23, Page 19 Line 1-9).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. **Claims 7 and 8** are rejected under 35 U.S.C. 103(a) as being unpatentable over Gallant et al (WO 01/84794) and further in view of Volt et al (US Patent Number 6157648).

Referring to claim 7, although Gallant et al teach the limitations of claim 1, they do not specifically teach the communication system according to claim 1, characterized in that the communication request comprises data which is relevant to minimum required communication features.

Volt et al teach a system which permits to query the gateways with specific features (Column 24 Line 45-52).

At the time of invention, it would have been obvious to a person of ordinary skill in the art to modify the teachings of Gallant et al with the teachings of Volt et al. The motivation would be to provide enhanced capabilities for implementing optimal gateway and routing selection.

Referring to claim 8, although Gallant et al teach the limitations of claim 1, they do not specifically teach the communication system according to claim 7, characterized in that the communication features at least comprise one of the following items: available bandwidth, maximum transmission rate, required bit error rate, non-blocking rate, experienced jitter or delay over the selected gateway(s), costs involved in the communication, available service and support

for the service, available processing power or storage capacity, opening/closing time of the selected gateway(s).

Volt et al teach a system which permits to query the gateways with such specific features (Column 24 Line 45-52).

At the time of invention, it would have been obvious to a person of ordinary skill in the art to modify the teachings of Gallant et al with the teachings of Volt et al. The motivation would be to provide enhanced capabilities for implementing optimal gateway and routing selection.

7. **Claims 11 and 12** are rejected under 35 U.S.C. 103(a) as being unpatentable over Gallant et al (WO 01/84794).

Referring to claim 11 and 12, It would have been obvious to have a computer program suited for implementing and a protocol suited for applying the method according to claim 10 since Gallant et al teach a communication system having an instruction to control network communication (see figure 4 and Page 17 Line 15-16, Page 18 Line 1-23, Page 19 Line 1-9).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DINESH GOEL whose telephone number is (571)270-5201. The examiner can normally be reached on Monday-Friday 8:00 AM-5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lun Yi Lao can be reached on 571-272-7671. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. G. /
Examiner, Art Unit 4134
/LUN-YI LAO/
Supervisory Patent Examiner, Art Unit 4134